IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14684 of 2003

For Approval and Signature:

ON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF INDIA

Versus

HEM PLAST HEALTH CARE PVT.LTD.

Appearance:

1. Special Civil Application No. 14684 of 2003

MR JT TRIVEDI for

MR BJ TRIVEDI for Petitioner

MR DHARMENDRA PARIKH for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 15/01/2004

ORAL JUDGEMENT

The petitioner before this Court is the Bank of India, a nationalized Bank [hereinafter referred to as, "the Bank"]. The petitioner challenges the Order dated 23rd July, 2003 made by the learned Civil Judge [SD], Vadodara below Application Exh. 13 in Special Civil Suit No. 21 of 2003.

It appears that the Bank had advanced certain loan/cash credit facility to Messrs. Hem Plast Health Care Private Limited, the respondent herein [hereinafter referred to as, "the Company"]. The Company failed to repay its dues to the Bank. The Bank has, therefore, preferred Original Application No. 411 of 2002 before the Debts Recovery Tribunal, Ahmedabad for recovery of a sum of Rs. 74,99,584/= from the Company. Pending the said Application, the Company has instituted aforesaid Special Civil Suit No. 21 of 2003 in the Court of Civil Judge [SD], Vadodara for recovery of a sum of Rs. 190.60 lacs from the Bank by way of damages and the interest. It is the claim of the Company that the Company had been revived under the Revival Scheme proposed by the Bank. Nevertheless, the Bank did not disburse the term loan as agreed. Hence, the suit for damages.

Pending the said suit, the Bank filed Application Exh. 13. The Bank relied upon Sections 17, 18, and 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993; as amended by the Act No.1 of 2000, [hereinafter referred to as, "the Act"]. In the submission of the Bank, the suit instituted by the Company is in the nature of counter claim. The Tribunal constituted under the Act, therefore, shall have jurisdiction to entertain and decide such counter claim as a cross suit. The suit, therefore, shall be transferred either to the Tribunal or the plaint shall be returned to the plaintiff for presentation before the appropriate forum i.e., the Tribunal. The said Application came to be rejected by the learned Judge under the impugned order dated 23rd July, 2003. Feeling aggrieved the petitioner has preferred the present petition.

Learned advocate Mr. Trivedi has submitted that the damages claimed by the Company arises from the loan transaction of the Company with the Bank. The said suit, therefore, is necessarily a counter claim against the recovery sought by the Bank. In view of the provisions contained in Section 19 of the Act, such counter claim is required to be decided by the Tribunal as cross-suit. The suit, therefore, is required to be transferred to the Tribunal and be decided as a cross suit preferred by the

opponent in the Original Application instituted by the Bank against the Company. In support of his contention, Mr. Trivedi has relied upon the judgment of the Hon'ble Supreme Court in the matter of United Bank of India, Calcutta v. Abhijit Tea Company Private Limited & Ors. [AIR 2000 SC 2957].

The learned advocate Mr. Parikh has appeared for the Company and has contested the petition. He has submitted that the claim for damages made by the Company cannot be equated with that of debt as understood in the common parlance. The Tribunal, therefore, cannot have jurisdiction to entertain and decide the claim for damages made by the Company.

I am unable to agree with Mr. Parikh. Section 19 of the Act specifically empowers the defendant in an application before the Tribunal to claim set-off or to put forth a counter claim. It also enjoins upon the Tribunal to decide the claim for set-off or counter claim as a cross suit. The Hon'ble Supreme Court also, in the matter of United Bank of India, Calcutta {Supra}, has considered the aforesaid provisions of Section 19 of the Act and has held that that suit for damages filed by the respondent-Company was necessarily a counter claim and was required to be decided by the Tribunal. In the present case also, having regard to the averments made in the plaint, it is evident that the suit for damages instituted by the Company is in the nature of counter claim. In view of the above legal position, such counter claim requires to be decided by the Tribunal as a cross suit.

For the aforesaid reasons, the petition is allowed. The impugned order dated 23rd July, 2003 made by the learned Civil Judge [SD], Vadodara below Application Exh. 13 in Special Civil Suit No. 21 of 2003 is quashed and set-aside. The Application Exh. 13 preferred by the Bank is allowed. Special Civil Suit No. 21 of 2003 pending before the learned Civil Judge [SD], Vadodara is directed to be transferred to the Debts Recovery Tribunal, Ahmedabad to be decided as a cross suit alongwith Original Application No. 411 of 2002 filed by the Bank. Rule is made absolute accordingly. The parties shall bear their own costs.

{Ms. R.M Doshit, J.}

Prakash*